



THE CITY OF SAN DIEGO MANAGER'S REPORT

DATE ISSUED: October 11, 2000 REPORT NO. 00-200

ATTENTION: Honorable Mayor and City Council
Docket of October 16, 2000

SUBJECT: San Diego Municipal Code Ordinance Changes related to Nude
Entertainment, Outcall Nude Entertainment, and Peep Show
Establishments

REFERENCE: Manager's Report No. 00-53, dated March 3, 2000
Manager's Report No. 00-156, dated July 28, 2000

SUMMARY

Issues – 1) Should the City of San Diego amend the Municipal Code regulating Nude Entertainment Businesses, Outcall Nude Entertainment and Peep Show Establishments?
2) Should the proposed regulatory fees be adopted, in order to recover costs?

Manager's Recommendation – Approve the changes to the Municipal Code and approve the regulatory fees.

Other Recommendations – None.

Fiscal Impact – The regulatory fees are derived from the cost of administration, implementation, and enforcement for the industries affected by this proposal. The proposed fees are based on the Police Department's personnel time dedicated to the regulation of the various industries. If the proposed ordinances are approved by City Council, the annual regulatory fee for the nude entertainment business permit will be increased from \$666 to \$2471. The annual regulatory fee for the nude entertainer's permit will be increased from \$28 to \$51. The annual regulatory fee for Peep Shows will be increased from \$50 to \$75 per booth. The estimated cost of enforcement is \$169,655 and the estimated revenue is \$169,655. The current total amount of revenue recovered is \$85,138; however, the proposed fees will recover an additional \$84,517 for 100% cost recovery. There are no additional costs or fees associated with the Outcall Nude Entertainment Business (previously called Escorts and Escort Services). The Outcall

Nude Entertainer (Escort) fees will remain \$107 annually and the Outcall Nude Entertainment Business (Escort Service) fee will remain \$2,583 annually.

BACKGROUND

In November, 1992, a Vice and Licensing Task Force was formed as a joint venture between the City Attorney's Office and the San Diego Police Department. The Task Force studied and made recommendations regarding the following industries: massage and holistic health; dance, cabaret, after-hours, and promoters; peep shows; nude entertainment; and escorts. The Task Force recommended amending Chapter III, Article 3 of the San Diego Municipal Code. The recommendations were presented to the Public Safety and Neighborhood Services Committee in 1995 and 1996. At that time the Committee accepted the recommendations and directed City staff to develop new ordinances and amend existing ordinances. The ordinance project continued over the years but met with a number of unforeseen delays along the way.

In early 1999, the ordinance project was revitalized by the Vice Unit. Research was done on each ordinance to ensure the recommended changes were appropriate based on current industry standards and current court cases. Vice investigators conducted inspections and gathered information about changes that occurred in the industry since the Task Force recommendations were made in 1996.

On May 3, 2000, the Committee on Public Safety & Neighborhood Services heard the recommendations for Peep Show Establishments and Out-call Nude Entertainment (formally called Escorts and Escort Services). On July 28, 2000, the Committee on Public Safety & Neighborhood Services heard the recommendations for Nude Entertainment. At both meetings, the Committee approved the recommendations with some modifications for presentation to full Council.

DISCUSSION

The Task Force goals were the adoption of contemporary, fair, and legally sound ordinances, an effective enforcement policy for police regulated businesses, and identification of recoverable costs for investigation and enforcement. The Task Force wanted to create ordinances, policies, and procedures that would provide incentives for businesses to police themselves. The Task Force wanted to be specific about the intent of the ordinances and the problems to be addressed.

The original legislation regulating the nude entertainment industry was enacted in 1978. Vice officers' primary concerns in regulating nude entertainment businesses are lewd acts, prostitution and organized crime. The regulations were amended several times over the years. The most notable revisions, enacted in 1987, were the addition of the "six foot rule," and the decriminalization of some regulations.

The First Amendment protects speech, which includes expressive activity such as nude entertainment. Regulations dealing with nude entertainment must be designed to protect

governmental interests and not control the content of speech. To be valid, regulations must (1) serve a significant governmental interest, (2) be tailored to further the state's legitimate interest; and (3) may not be based upon either the content or subject matter of the speech. A critical factor the Supreme Court considers when ruling on the efforts of local communities to regulate nude entertainment establishments is the governmental interest in protecting the surrounding communities from the "secondary effects" of such businesses. "Secondary effects" include an adverse affect on property values and an increase in crime. The proposed ordinance details the intent of the ordinance regarding the secondary effects of nude entertainment. The amendments are designed to prevent costly civil litigation and are designed to prevent legal challenges that are raised regarding constitutional concerns.

Current nude entertainment establishments feature either topless or completely nude dancing. In non-alcohol businesses, sometimes called "juice bars", the entertainers perform completely nude and no one under the age of 18 is admitted. In a business licensed to serve alcohol, no one under the age of 21 is admitted. The entertainers in the alcohol establishments perform topless. Couch and table dancing are also performed at these establishments. "Couch dancing" is a semi-private dance performed for a patron seated on a couch. The entertainer stands on the couch, straddling the patron, and dances. "Table dancing" is a semi-private dance performed on a small table with one or more patrons seated around the table. In the non-alcohol establishments, tables are placed exactly six feet from the patrons to allow for semi-private nude table dancing. Similar types of dances are commonly referred to as "personal dances" or "lap dances." Entertainers performing less than six feet from a patron wear opaque stockings to cover their buttocks, and tops to cover their breasts.

The couch dancing, table dancing, personal dancing and lap dancing have led to inappropriate conduct between the entertainers and customers. Such inappropriate conduct includes lewd acts and illegal sexual conduct. On numerous occasions during these performances, Vice Officers have observed the entertainer directly rubbing up against the customers, patrons fondling the entertainers, and in some cases, the entertainer fondling the customers. Some clubs have their own set of regulations which prohibit touching between the dancers and customers. The proposed amendments address the inappropriate conduct by incorporating "no touching" regulations into the ordinance.

Escorts and escort services are regulated under Chapter III, Article 3, Division 28 of the San Diego Municipal Code. The ordinance was enacted in 1990 and replaced an ordinance that regulated Friendship Clubs. The escort service or agency is defined as a service that employs individuals to accompany or consort with other persons at social affairs or in private. The escort ordinance was enacted to help police officers identify and deal with prostitution in the industry.

Almost all individuals who currently work as escorts also purchase a nude entertainment permit which allows them to perform in the nude for individual clients and at private parties. The Police Department's recent experience finds that no businesses operate solely as an escort service. They all offer nude entertainment or massage in combination with their escort service. There does not appear to be anyone currently operating as an "escort" by the current definition. It is the Police Department's recommendation that the escort industry be re-defined as "out-call nude entertainment" and eliminate the regulation of escorts which do not involve nudity.

Additionally, the proposed amendments will prohibit out-call nude entertainers (escorts) from providing any massage in conjunction with their out-call nude entertainment appointment.

The Police Department's experience with this industry finds that most escort services are involved in prostitution. The officers have been successful in obtaining pimping and pandering convictions against this industry. The biggest problem for officers is most escort businesses advertise in the yellow pages, newspapers, and on Internet websites and have phone lines outside the City. This makes it difficult to prove that they are within the scope of local regulation. The proposed amendments address these issues by requiring the licensed businesses to notify the police department of any phone numbers they use and by requiring them to provide their police permit number in their advertisements.

Peep show establishments are regulated under Chapter III, Article 3, Division 33 of the San Diego Municipal Code. The initial ordinance regulating peep shows was enacted in 1968. Most peep show establishments are located inside adult bookstores. A peep show booth is a partially enclosed cubicle, that usually accommodates between one and five persons. The material viewed in these booths is typically sexually explicit adult videos.

In 1984, the Peep Show Establishment Ordinance was amended requiring that the doors and the curtains on peep booths be removed and that all the booths be in full view of attendants. The industry challenged the constitutionality of the ordinance under the First Amendment and the right to privacy. The requirement to remove the doors was upheld after lengthy litigation. After the industry was forced to remove the doors from their booths, the owners re-designed and installed larger booths with doors and renamed them "preview booths". The Police Department was forced to pursue new legislation to regulate the new preview booths because they did not meet the "peep booth" definition. In 1990, the ordinance was amended to expand the definition of a peep booth to include preview booths. No enforcement action was taken because of pending litigation and the formation of the Vice and Licensing Task Force.

The primary concerns in regulating peep booths are lewd acts, obscenity, organized crime and prostitution. Vice officers have also expressed concern about the lack of cleanliness in some peep booths, the spread of diseases, and the use of narcotics in the booths. The industry states that open booths provided a natural invitation to a person looking for a sexual partner inside a booth. This is commonly referred to as "cruising." Without the door as an obstacle, an individual is free to approach, openly solicit, and engage in sexual activity with a willing person inside the peep booth. Industry members have offered the following suggestions to address this issue: putting doors on the peep booths; eliminating preview booths; allowing only one person in a booth; and cutting the doors to allow for officer inspections. The industry's main concern was that all establishments comply with new regulations to ensure a level playing field. The proposed amendments to the Peep Show Establishment Ordinance include those suggestions.

The recommended amendments for the aforementioned industries will strengthen the existing ordinances; enact reasonable time, place and manner regulations that address the adverse secondary effects of adult-oriented businesses; and comply with current court decisions related to the regulation of adult-oriented businesses. The following are the highlights of the proposed ordinances:

NUDE ENTERTAINMENT BUSINESS

- Adds regulations to prevent touching between patrons and entertainers during performances in order to reduce the likelihood that such persons will negotiate or transact sexual favors.
- Adds regulations to prevent touching of specified anatomical areas at anytime in order to reduce the likelihood that such persons will negotiate or transact sexual favors.
- Modifies the operating hours (no operating between the hours of 2:00 a.m. and 6:00 a.m.) in order to reduce the adverse secondary effects associated with nude entertainment businesses.

OUTCALL NUDE ENTERTAINMENT

- Eliminates regulation of escorts which do not involve nudity and redefines “escorts” as “outcall nude entertainers” and “escort services” as “outcall nude entertainment businesses”.
- Adds regulations to prevent intentional touching between patrons and entertainers during performances.
- Modifies the operating hours (no operating between the hours of 2:00 a.m. and 6:00 a.m. in order to reduce the adverse secondary effects associated with nude entertainment businesses.
- Requires the business to report all telephone numbers or listings used by the business within ten days of the number becoming operative or non-operative.
- Requires the business to include the police permit number in any advertisement of services.
- Prohibits outcall nude entertainers from providing massage services to a patron immediately before or after providing outcall nude entertainment services.

PEEP SHOW ESTABLISHMENTS

- Prohibits more than one person in a booth, condenses the size of the booth to allow only one person to fit inside the booth.
- Requires doors on the peep booths to prevent cruising and to eliminate multi-party preview booths.
- Eliminates openings between booths.
- Requires owners to install additional lighting and video cameras in open spaces.
- Modifies the operating hours (no operating between the hours of 2:00 a.m. and 6:00 a.m.).

ALTERNATIVE

Approve selected recommendations.

Approve none of the recommendations.

Respectfully submitted,

David Bejarano
Chief of Police

Approved: Michael T. Uberuaga
City Manager

BEJARANO/LD

- Attachment:
1. City Manager's Report No. 00-53, dated March 3, 2000
 2. City Manager's Report No. 00-156, dated July 28, 2000 (This document is available at the City Clerk's office, it is not available electronically.)
 3. Draft Ordinance, 0-2001-8, Division 36 - Nude Entertainment Business (This document is available at the City Clerk's office)
 4. Draft Ordinance, 0-2001-10, Division 28 - Outcall Nude Entertainment Business (This document is available at the City Clerk's office)
 5. Draft Ordinance, 0-2001-6, Division 33 - Peep Show Establishments (This document is available at the City Clerk's office)
 6. Vice and Licensing Task Force Report, June 1996
 7. Luth Report
 8. Proposed Fee Structure
 9. Compilation of studies documenting the negative secondary side effects of Adult Entertainment Business (This document is available at the City Clerk's office, it is not available electronically.)